

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHESTER MITCHELL,

Plaintiff,

vs.

No. CIV 03-00061 RLP/LCS

MIKE BRISENO,

Defendant.

PLAINTIFF'S MOTION FOR A MISTRIAL

Plaintiff Chester Mitchell, by and through his attorney, Joe M. Romero, Jr., hereby moves the Court to Order a mistrial based on juror misconduct. As grounds therefore, Plaintiff states:

Based on the letter of juror Celeste O'Neill, it is apparent that juror Maier was not honest with the court about her ability to be fair and impartial. Ms. Maier, according to Ms. O'Neill, is telling the other jurors that she is "very emotional" about this case because her husband was a police officer who was killed in the line of duty. It is difficult to believe that Ms. Maier feeling very emotionally about this case will not affect her impartiality. Ms. Maier may also have given the jury instructions on the law which are in antithesis to the court's instructions.

WHEREFORE, Plaintiff respectfully requests that this Court Order a mistrial.

Respectfully submitted,

(Electronically Filed)

By:

Joe M. Romero, Jr.
Attorney for Plaintiff
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I hereby certify that a true and correct copy of the foregoing pleading was faxed and mailed to opposing counsel, Gregory V. Pelton, Pelton & Associates PA, 4300 Carlisle NE #4, Albuquerque, NM 87107-4827, (505) 884-6860 on Monday, December 13, 2004.

(Electronically Filed)

Joe M. Romero, Jr.